

# Decision

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Matter of: Kenneth A. Cucullu - Relocation -  
Automobile Rental Expenses - Waiver

File: B-236570

Date: April 13, 1990

## DIGEST

A transferred employee was issued orders erroneously authorizing reimbursement for rental car expenses at his new duty station while awaiting authorized shipment of a privately owned vehicle, and was given a travel advance. Payment of rental car expenses at a new permanent duty station while awaiting arrival of one's privately owned vehicle is not authorized under 5 U.S.C. § 5724a (1988). After he incurred expenses in reliance on the erroneous orders the error was discovered. Repayment of the travel advance to the extent of the amount specifically authorized for rental car expenses is waived under 5 U.S.C. § 5584, since the employee actually spent the advance in good faith reliance on the erroneous travel orders.

## DECISION

The Chief of the Accounting Section, Southwest Region of the Internal Revenue Service, forwards the claim of Mr. Kenneth A. Cucullu for the rental car expenses erroneously authorized in connection with his official change in post of duty. Mr. Cucullu had received a travel advance which included funds for the rental car to which he was not entitled. For the reasons stated below, we grant waiver of this indebtedness in the amount specifically authorized for that purpose on the travel order.

## BACKGROUND

Mr. Cucullu was transferred from Anchorage, Alaska, to Austin, Texas. In this connection, on Travel Authorization Form 4253, he was authorized \$515 for car rental expenses pending the shipment of his privately owned vehicle. He was given a travel advance in the amount of \$3,725. Mr. Cucullu claimed reimbursement, in the amount of \$1,422.55, for rental car expenses for transportation to and from the airport, transportation to and from work, limited

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official business, and other personal travel while in temporary quarters. The IRS disallowed the claim based on its interpretation of the IRS Manual, finding that rental car expenses for the given purposes were not reimbursable. The agency asserts that Mr. Cucullu's use of a rental car was erroneously authorized by someone without proper authority to approve such expenses. Mr. Cucullu reclaimed the disallowed expenses and requested that an agency decision be based on the fact that he acted in good faith and pursuant to what appeared to be appropriate authorization. The agency asks our Office to waive Mr. Cucullu's car rental expenses since they were authorized and were incurred in good faith.

#### OPINION

##### Payment of rental car expenses

Reimbursement for relocation expenses of transferred employees is authorized under 5 U.S.C. § 5724a (1988), which provides for the subsistence expenses of the employee and his immediate family while occupying temporary quarters. This statutory provision is implemented by the Federal Travel Regulations (FTR), paras. 1-1.3b, 1-2.2, and 1-3.21/ which provide that an employee may use a rental car if an appropriate official has determined that the use of a common carrier or other method of transportation would not be more advantageous to the government and the car is used for official business.

In our prior decisions, even when competent authority determines a rental car is more advantageous to the government, we have denied reimbursement for the cost of the rental car where the employee did not use it for official purposes. Ronnie Davis, B-204324, Apr. 27, 1982. Furthermore, our Office has denied reimbursement for the cost of renting an automobile while the employee is awaiting arrival of a privately-owned vehicle. Joseph P. Crowley, B-186115, Feb. 4, 1977. An exception was made in Raymond E. Vener, B-199122, Feb. 18, 1981, where we allowed reimbursement of rental car expenses to a transferred employee, who was awaiting arrival of his car, on a pro rata basis only for the days the vehicle was used for government business where the agency made a determination that it was advantageous to the government. In Mr. Cucullu's case, there was no such determination.

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1/ (Supp. 1/ Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

We have also denied payment even when it was clear from the record that an employee traveled in reliance upon what was believed to be a proper travel authorization. See Eugene B. Roche, B-205041, May 28, 1982. ✓ We held in Roche that erroneous advice or authorization does not create a right to reimbursement where the expense claimed is precluded by law.

Accordingly, Mr. Cucullu is not entitled to reimbursement of the rental car expenses.

#### Waiver of the travel advance

Under the authority of 5 U.S.C. § 5584 ✓ (1988), overpayments of travel and transportation expenses may be waived where collection would be "against equity and good conscience and not in the best interest of the United States" and there is no indication of "fraud, misrepresentation, fault or lack of good faith" on the part of any person having an interest in obtaining a waiver of the claim. We have held a travel advance payment to be erroneous and subject to waiver to the extent it was made to cover the expenses erroneously authorized and the employee actually spent the advance in reliance on the erroneous travel orders. Major Kenneth M. Dieter, 67 Comp. Gen. 496 ✓ (1988); Rajindar N. Khanna, 67 Comp. Gen. 493 ✓ (1988).

Further, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amounts advanced. So, for example, if an employee has both legitimate expenses and expenses which should not have been authorized, the travel advance must first be applied against the legitimate expenses. Any outstanding amount of the advance may then be applied against the erroneously authorized expenses and that amount could be considered for waiver. Rajindar N. Khanna, 67 Com. Gen. at 495 ✓ See also John B. Osborn, III, B-231146, Mar. 10, 1989. ✓

In this case, Mr. Cucullu was erroneously authorized to spend \$515 for rental car expenses on Travel Authorization Form 4253. There was no authorization to incur expenses for this purpose in excess of that amount. Therefore, we assume that \$515 of the travel advance of \$3,725 he received was to cover this erroneously authorized expense. After the legitimate expenses claimed by Mr. Cucullu are applied against the travel advance, there remains a balance of \$1,575. Of that amount to be refunded by Mr. Cucullu, \$515 may be waived as an erroneous payment since it was made to cover the expenses erroneously authorized and incurred by Mr. Cucullu in detrimental reliance on the erroneous order.

As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. See John B. Osborn, III, B-231146, supra. It appears reasonable in this case to assume that Mr. Cucullu did rely on the erroneous authorization in incurring the rental car expenses incurred.

Further, there is nothing in the record to indicate any fraud, misrepresentation or fault on Mr. Cucullu's part. Rather, it was reasonable for Mr. Cucullu to proceed in reliance on the erroneous order, up to the amount of \$515, since he had no reason to believe it was improper.

Accordingly, repayment of the erroneous amount of \$515 advanced to Mr. Cucullu is hereby waived.

*Milton J. Fowler*

Acting Comptroller General  
of the United States

CIVILIAN PERSONNEL

- Travel
- Advances
- Overpayments
- Debt collection
- Waiver

CIVILIAN PERSONNEL

- Relocation
- Travel expenses
- Rental vehicles
- Reimbursement